Office-Supreme Court, U.S.
FILED
JAN 31 1964
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1963

No. 76

SIDNEY ARCENEAUX,

Petitioner,

versus

STATE OF LOUISIANA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

SUPPLEMENTAL BRIEF ON BEHALF OF RESPONDENT, STATE OF LOUISIANA.

JACK P. F. GREMILLION,
Attorney General, State of Louisiana,
Baton Rouge, Louisiana;
M. E. CULLIGAN,
Assistant Attorney General,
New Orleans, La.;
BERTRAND DE BLANC,
District Attorney,
Fifteenth Judicial District Court,
Lafayette, Louisiana;
WILLIAM E. LOGAN, JR.,
Assistant District Attorney,
Attorneys for Respondent.

Montgomery & Co., "The Brief Specialists", 430 Chartres St., N. O., La.

SUBJECT INDEX.

	Page
STATEMENT	1
SUPPLEMENTAL ARGUMENT	2
CONCLUSION	10
CERTIFICATE	12
EXHIBIT "1"	13
EXHIBIT "2"	15
EXHIBIT "3"	17
EXHIBIT "4"	19

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1963

No. 76

SIDNEY ARCENEAUX,

Petitioner.

versus

STATE OF LOUISIANA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

SUPPLEMENTAL BRIEF ON BEHALF OF RESPONDENT, STATE OF LOUISIANA.

May It Please the Court:

STATEMENT.

During the presentation of this case, this Honorable Court, through its chief justice, requested counsel for respondent to file a supplemental brief on the question of what remedies, if any, are now available to the petitioner, Sidney Arceneaux, in state court, based upon the complaint made by him relative to his incarceration and subsequent plea of guilty to the crime charged.

Permission of the Court was also granted to respondent to file a supplemental brief in support of respondent's contention that the issue presented by petitioner is moot.

REMEDIES AVAILABLE TO PETITIONER.

Petitioner, Sidney Arceneaux, was charged in state court with the crime of vagrancy, a misdemeanor under the laws of Louisiana. He pleaded guilty to said charge and was sentenced to four months in jail. The judge gave him credit for time served, and he was forthwith discharged. He is no longer in the custody of the respondents or its courts.

Petitioner alleges illegal detention, denial of right to counsel, and illegal procurement of guilty plea, all of which petitioner alleges was done by the illegal acts of state officials. These allegations are denied by respondent. The validity of these claims was never determined in any judicial proceedings in any court.

WHAT REMEDIES ARE NOW AVAILABLE TO PETITIONER TO ESTABLISH THESE ALLEGED FACTS AND TO SECURE REDRESS?

It is submitted that petitioner has no remedies at this time. After his plea of guilty and sentence he had a right of appeal to the district Court, where he would have received a trial *de novo* in accordance with the provisions of *Louisiana Revised Statutes*, Title 13, Section 2214, which provides in part:

> ". . . Persons sentenced to a fine or imprisonment by the city court shall be entitled to an appeal

> to the district court of the parish of Lafayette upon giving good and solvent security in favor of the city judge for fine and costs of court. The appeal in such cases shall be tried de novo without a jury in the district court."

He had ten (10) judicial days after sentence to move for his appeal in accordance with the provisions of *Louisiana Revised Statutes*, Title 15, Section 542, the pertinent part of which reads as follows:

> "The party desiring to appeal in a criminal case shall make in open court a motion for an appeal verbally or in writing, within ten judicial days after the rendition of the judgment complained of; . . ."

Had petitioner taken advantage of his right of appeal, he would have received a new trial in the district Court. There he would have been given an opportunity to allege and prove the illegal acts which he says were committed by the state officials in connection with his incarceration and plea of guilty. However, he permitted prescription to set in without taking any action. He is now barred from asserting these claims.

Counsel for petitioner herein had immediate knowledge of petitioner's plea of guilty as well as his release from jail. This is shown by an affidavit of petitioner submitted to this Court as Appendix "B" attached to his reply and supplemental brief filed herein. This affidavit which counsel submitted for this Court's consideration contained the following paragraph on page 9:

> "Immediately thereafter he was brought back to the Parish jail where he secured his belongings and left. After he left he called by telephone his counsel's office but his retained counsel, J. Minos Simon, was not in the office and he thereupon talked to counsel's secretary, advising that he had plead guilty and he was released from jail."

Counsel for petitioner in support of his own case admits that petitioner gave his office ample notice of the guilty plea to permit him to move for an appeal to the district Court and there receive a new trial. He has, therefore, lost all his rights in state court by his failure to take advantage of his right to a new trial in the state district Court by moving for an appeal within the ten judicial days from the date of imposition of sentence.

Petitioner may seek a pardon. *Constitution of Louisiana*, Article 5, Section 10, and *Louisiana Revised Statutes*, Title 15, Section 572. This is not really a remedy, since the obtaining of a pardon is not a matter of right. It is rather a matter of equity, or, as has been said, it is a matter of grace. However, a pardon from the governor would completely erase the conviction and obliterate the offense. It is a remission of guilt. A prerequisite to the granting of a pardon by the governor is a recommendation by the Pardon Board which is based upon a hearing. There the petitioner has the opportunity of presenting and proving all of the facts alleged in his complaint.

Petitioner also has his civil remedy if he can prove the violation of his civil rights by public officials.

Respondent wishes to point out that public officials in Louisiana are required by law to conduct themselves in a manner befitting their office. Article 9, Section 1, of the Constitution of Louisiana provides for the removal of public officials for gross misconduct. *Louisiana Revised Statutes*, Title 14, Section 134, provides a criminal penalty for malfeasance in office by public officials.

Constitution of Louisiana, Article 9, Section 1, provides:

> "All state and district officers, whether elected or appointed, shall be liable to impeachment for high crimes and misdemeanors in office, incompetency, corruption, favoritism, extortion, or oppression in office, or for gross misconduct, or habitual drunkenness."

Louisiana Revised Statutes, Title 14, Section 134, provides:

> "Malfeasance in office is committed when any public officer or public employee shall:
>
> "(1) Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or
>
> "(2) Intentionally perform any such duty in an unlawful manner; or
>
> "(3) Knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner.

"Whoever commits the crime of malfeasance in office shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both."

THE QUESTION BEFORE THIS COURT IS MOOT SINCE THE ACCUSED IS NO LONGER IN THE CUSTODY OF THE RESPONDENT OR ITS COURTS OR CHARGED WITH THE OFFENSE UPON WHICH THIS CASE IS BASED.

In his petition to this Honorable Court the petitioner "prays that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana, entered on March 16, 1962, refusing writs of habeas corpus, certiorari, mandamus and prohibition, with respect to the rulings and judgment of the Fifteenth Judicial District Court in and for the Parish of Lafayette, Louisiana, on March 8 and 9, 1962."

The rulings of the state district judge complained of were to the effect that after the filing of a bill of information by the district attorney it is wholly within the discretion of the district judge to grant or refuse to grant a preliminary examination. Respondent not only maintains that this ruling is correct but also that it does not present any federal constitutional question.

Petitioner further claims he was denied a writ of *habeas corpus* by both the state district Court as well as the Louisiana Supreme Court. It is denied, however, that he ever made proper application for *habeas corpus*.

The United States Constitution provides that the federal power shall extend to cases and controversies.

This means that this Court decides actual controversies by a judgment which can be carried out and does not give opinions upon moot questions or abstract propositions, or declare principles of law which cannot affect the matter at issue in the case before it.

In the case of *Parker v. Ellis* (1960), 362 U. S. 574, 80 S. Ct. 909, petitioner had been convicted of forgery in a Texas district court. He sought a writ of *habeas corpus*. When the case was heard in the United States Supreme Court on certiorari, the petitioner had completed his sentence and had been released from prison. The Court remanded the case to the Court of Appeals to vacate its judgment and with directions to the district court to dismiss the application for a writ of *habeas corpus*. The Court held that it will not adjudicate a matter in which its judgment cannot operate, and, as the only judicial relief provided for by the statute authorizing the issuance of the *habeas corpus* writ is the discharge of the prisoner or his admission to bail, the issue has become moot.

In *Mills v. Green* (1895), 159 U. S. 651, the United States Supreme Court announced the principle of jurisdictional abnegation where moot questions or abstract propositions are presented to the Court. In that case the Court said on page 653:

> "The duty of this Court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it."

In *St. Pierre v. United States* (1943), 319 U. S. 41, 63 S. Ct. 910, the Court held that since petitioner's sentence had terminated before the case was heard before the Court, the issue became moot and the writ of certiorari was dismissed.

A thorough discussion of cases where moot questions were presented to this Court is to be found in the *Louisiana Law Review*, Volume 21, page 260.

The law relating to disabilities suffered generally by persons convicted of crime is found in Article 8, Section 6, of the Constitution of Louisiana and under Louisiana Revised Statutes, Title 15, Section 572.1. These disability provisions apply only to felonies.

Constitution of Louisiana, Article 8, Section 6, reads as follows:

> "The following persons shall not be permitted to register, vote or hold office or appointment of honor, trust, or profit in this State, to-wit: Those who have been convicted of any crime which may be punishable by imprisonment in the penitentiary, and not afterwards pardoned with express restoration of franchise; those who are inmates of any charitable institution, except the Soldiers' Home; those actually confined in any public prison; all interdicted persons, and all persons notoriously insane or idiotic, whether interdicted or not. The provisions of this Section concerning the right to register and vote shall not apply to inmates of the United States Marine Hospital No. 188 at Carville."

Louisiana Revised Statutes, Title 15, Section 572.1, reads as follows:

> "No person who has been convicted of any crime, either in any of the courts of Louisiana or in any of the courts of the United States, which may be punishable by imprisonment in the penitentiary and who has not been afterward pardoned with express restoration of franchise shall be permitted to register, vote, or hold office or appointment of honor, trust, or profit in the state of Louisiana. Whoever registers, votes, or remains in office illegally after having been convicted of a crime punishable by imprisonment in the penitentiary shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned for not less than thirty days nor more than six months, or both."

The heavier penalties imposed upon multiple offenders apply only to felonies and, therefore, would not affect the petitioner. The multiple offender law is found under Louisiana Revised Statutes, Title 15, Section 529.1.

Petitioner, having pleaded guilty to the crime of vagrancy, a misdemeanor under the laws of Louisiana, having been sentenced to a jail term and having served the sentence, will suffer no further disabilities or penalties.

In view, however, of some of the questions raised during oral argument of this case, as well as some of the language found in the cases involving moot issues, it is felt that this Court's attention should be directed to the public records of Louisiana, which show that petitioner

is a felon presently incarcerated in the state penitentiary, where he is serving a term of two years on each of three forgery convictions, felonies under the laws of Louisiana. By said conviction, petitioner has incurred all of the disabilities provided by Louisiana law. Respondent attached to this brief a copy of petitioner's conviction, dated September 12, 1963, recorded as a public record in the office of the Clerk of Court for the Fifteenth Judicial District of Louisiana in and for the Parish of Lafayette, marked Exhibit "1." Respondent also feels the attention of this Court should be directed to the public records of Louisiana, which show that petitioner has suffered the same disabilities since March 16, 1956, when he was sentenced to serve a term of three years in the state penitentiary for the crime of simple burglary, a felony under the laws of Louisiana. Respondent attached to this brief a copy of petitioner's convictions, dated March 16, 1956, recorded as a public record in the office of the Clerk of Court for the Fifteenth Judicial District of Louisiana in and for the parish of Acadia, marked Exhibits "2," "3" and "4."

The records of petitioner's felony convictions are submitted to this Honorable Court for its information only to the extent that the absence of felony convictions might affect the question of mootness.

CONCLUSION.

For the reasons stated in this supplemental brief, as well as in the original brief, it is urged that petitioner is not entitled to any of the relief sought by him. Ac-

cordingly, the motion to dismiss filed by respondent before this Honorable Court should be maintained.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General, State of Louisiana,
Baton Rouge, Louisiana;
M. E. CULLIGAN,
Assistant Attorney General,
New Orleans, Louisiana;
BERTRAND DE BLANC,
District Attorney,
Fifteenth Judicial District Court,
Lafayette, Louisiana;
WILLIAM E. LOGAN, JR.,
Assistant District Attorney,
Attorneys for Respondent.

CERTIFICATE.

I, M. E. Culligan, attorney for the State of Louisiana, and a member of the bar of the United States Supreme Court, do hereby certify that a copy of the foregoing brief for respondent was served on the petitioner through his counsel of record, hereinbelow named, by placing the same in the United States mail, addressed to them at their offices with sufficient postage thereon annexed:

Simon & Trice, Attorneys at Law, 1408 Pinhook Road, Post Office Box 2241, Lafayette, Louisiana.

M. E. CULLIGAN

EXHIBIT "1"

THURSDAY, SEPTEMBER 12, 1963

Court met this day pursuant to adjournment, present Hon. Jerome E. Domengeaux; Hon. Carrol L. Spell; Bertrand DeBlanc, District Attorney; J. H. DiCarlo, Deputy Sheriff; Loreene R. Montgomery, Court Reporter; and Carolyn D. Walker, Deputy Clerk of Court, being in attendance.

JUDGE DOMENGEAUX PRESIDING: CRIMINAL SESSION
FORGERY

16649
STATE OF LOUISIANA
VS.
SIDNEY ARCENEAUX

The accused was present in open Court in proper person, was regularly arraigned and pleaded guilty to the charge preferred against him. The accused informed the Court that he was not represented by counsel and that he did not desire to have the Court appoint counsel to represent him as he wished to plead guilty. The accused waived legal delays and requested the Court to sentence him forthwith. It was judicially established that the accused is twenty-eight years of age. It was considered by the Court that the accused be sentenced to serve a term of two years at hard labor in the State Penitentiary at Angola, Louisiana.

* * * * * *

STATE OF LOUISIANA
PARISH OF LAFAYETTE

THIS IS TO CERTIFY that the above and foregoing is a true and correct EXTRACT of the Minutes of Court taken the 12th day of September, 1963.

Witness the Honorables, Judges of the said Court, this 12th day of September, A. D., 1963.

s/ Marilyn Champagne

DEPUTY CLERK OF COURT

EXHIBIT "2"

THURSDAY, SEPTEMBER 12, 1963

Court met this day pursuant to adjournment, present Hon. Jerome E. Domengeaux; Hon. Carrol L. Spell; Bertrand DeBlanc, District Attorney; J. H. DiCarlo, Deputy Sheriff; Loreene R. Montgomery, Court Reporter; and Carolyn D. Walker, Deputy Clerk of Court, being in attendance.

JUDGE DOMENGEAUX PRESIDING: CRIMINAL SESSION

FORGERY

16650)
STATE OF LOUISIANA)
VS.)
SIDNEY ARCENEAUX)

The accused was present in open Court in proper person, was regularly arraigned and pleaded guilty to the charge preferred against him. The accused informed the Court that he was not represented by counsel and that he did not desire to have the Court appoint counsel to represent him as he wished to plead guilty. The accused waived legal delays and requested the Court to sentence him forthwith. It was judicially established that the accused is twenty-eight years of age. It was considered by the Court that the accused be sentenced to serve a term of two years at hard labor in the State Penitentiary at Angola, Louisiana; said sentence to run concurrent with sentence in # 16649.

* * * * * * *

STATE OF LOUISIANA
PARISH OF LAFAYETTE

THIS IS TO CERTIFY that the above and foregoing is a true and correct EXTRACT of the Minutes of Court taken the 12th day of September, A. D., 1963.

Witness the Honorables, Judges of the said Court, this 12th day of September, A. D., 1963.

s/ Marilyn Champagne

DEPUTY CLERK OF COURT

EXHIBIT "3"

THURSDAY, SEPTEMBER 12, 1963

Court met this day pursuant to adjournment, present Hon. Jerome E. Domengeaux; Hon. Carrol L. Spell, Bertrand DeBlanc, District Attorney; J. H. DiCarlo, Deputy Sheriff; Loreene R. Montgomery, Court Reporter; and Carolyn D. Walker, Deputy Clerk of Court, being in attendance.

JUDGE DOMENGEAUX PRESIDING: CRIMINAL SESSION

FORGERY

16651)
STATE OF LOUISIANA)
VS.)
SIDNEY ARCENEAUX)

The accused was present in open Court in proper person, was regularly arraigned and pleaded guilty to the charge preferred against him. The accused informed the Court that he was not represented by counsel and that he did not desire to have the Court appoint counsel to represent him as he wished to plead guilty. The accused waived legal delays and requested the Court to sentence him forthwith. It was judicially established that the accused is twenty-eight years of age. It was considered by the Court that the accused be sentenced to serve a term of two years at hard labor in the State Penitentiary at Angola, Louisiana; said sentence to run concurrent with sentence in # 16649.

* * * * * *

STATE OF LOUISIANA
PARISH OF LAFAYETTE

THIS IS TO CERTIFY that the above and foregoing is a true and correct EXTRACT of the Minutes of Court taken the 12th day of September, A. D., 1963.

Witness the Honorables, Judges of the said Court, this 12th day of September, A. D., 1963.

s/ Marilyn Champagne

DEPUTY CLERK OF COURT

EXHIBIT "4"

FRIDAY, MARCH 16th, 1956

Court met pursuant to adjournment with his Honor A. Wilmot Dalferes, Judge presiding; W. H. Burt, Dy. Sheriff; F. L. Landry, Dy. Clerk of Court and A. H. Gifford, Court Reporter.

CRIMINAL SECTION

# 7559	)	Comes the Assistant District
State of Louisiana	)	Attorney into open Court,
Vs:	)	leave of the Court being first
Sidney Arceneaux	)	had and obtained and files a

Bill of Information against Sidney Arceneaux for the crime of Simple Burglary. Now comes the accused Sidney Arceneaux into open Court. Upon being arraigned the accused enters a plea of Guilty as charged. The accused waives all legal delays and asked to be sentenced forthwith at his own request. It was judicially established that the accused is 21 years of age. It is considered by the Court that the accused be incarcerated in the State Penitentiary at Angola, La., for a term of three (3) years, at hard labor, said sentence to begin from his actual incarceration therein.

* * * * * *

State of Louisiana
Parish of Acadia

I HEREBY CERTIFY that the above and foregoing is a true and correct EXCERPT of the minutes of Court, of the 15th Judicial District, in and for Acadia Parish, Louisiana, of date, March 16th, 1956.

WITNESS MY HAND and seal of Office at Crowley, Acadia Parish, Louisiana, on this 7th day of January A. D., 1964.

s/ John D. Sittig

.....

Dy. Clerk of Court